

STATEWIDE POLICY

SECTION 4: FAMILY AND MEDICAL LEAVE ACT (FMLA) LEAVE

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4A. General Information

The Family and Medical Leave Act (FMLA) is a federal law which entitles eligible employees up to twelve weeks (480 hours for full-time employees) of unpaid leave for a qualifying medical condition. Employees may, at their discretion, elect to use accrued vacation and sick leave balances concurrently while on FMLA leave.

To qualify for FMLA leave, the employee must meet eligibility criteria, must submit a written request, and upon return to work must provide a medical release (as appropriate).

In the event an employee does not request FMLA leave for time off work for a qualifying medical condition, the Agency will designate the employee’s absence as FMLA leave.

This policy is not intended to be all-inclusive. The exceptions and unique situations regarding FMLA benefits are too numerous and complex to address in this policy alone. Consultation with Human Resources is encouraged.

4B. Employee Eligibility

An employee must meet both of the following criteria in order to be eligible for FMLA leave:

1. The employee must have been employed with the State of Idaho for at least twelve months. The twelve months do not have to be continuous employment. Similarly, the twelve months do not have to be all with one agency. Employees who were on the payroll for any part of a week (even

just one day) will be credited with a full week toward their total. This includes part-time and temporary workers; and

2. The employee must have worked at least 1,250 hours during the twelve-month period immediately preceding the leave. This 1,250 hours must be hours worked; it does not include paid vacation or sick time, nor periods of unpaid leave during which other benefits (i.e. a group health plan or worker's compensation) continued to be provided by the employer.

4C. Allowable Purposes for FMLA Leave

FMLA provides leave to employees for the following four reasons:

1. Birth of a child.
 - FMLA leave to care for or assist in the care of a newborn is available to all employees (male and female) as long as they are the parents or legal guardians of the child.
 - An expectant mother may take FMLA leave if her pregnancy makes her unable to work before the birth of the baby. Under the FMLA, pregnancy and pre-natal care involve continuing treatment by a health care provider, and therefore qualify as a serious health condition.
2. Adoption of a child or placement of a child in foster care.
 - FMLA leave may be taken for events incident to the adoption process such as pre-placement counseling sessions, court appearances, attorney consultations, and care for the adopted child. (This is not a conclusive list.)
 - FMLA leave may be taken in conjunction with the placement of a child in foster care.

Limitation: An employee's right to take leave for birth and care of a newborn, or for placement of a child for adoption or foster care, must conclude within 12 months of the birth or placement.

3. To care for the employee's spouse, children (under 18 years of age¹) or parents who have a serious health condition. (The FMLA does not provide for leave to care for siblings or in-laws with serious health conditions.)

¹ The child must be under 18 years of age unless the child is incapable of self-care due to a mental or physical disability.

If an employee requests FMLA leave to care for qualifying family members, the employer may require a doctor's letter stating the need for support or care for the family member's illness, as well as its expected duration.

4. Due to the employee's own serious health condition.

4D. Definition of "Serious Health Condition"

A "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. Hospital Care. Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity² or subsequent treatment in connection with or consequent to such inpatient care.
2. Absence Plus Treatment. A period of incapacity that also involves treatment³ by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.
3. Pregnancy (includes any period of incapacity due to pregnancy, or for prenatal care).
4. Chronic Conditions Requiring Treatments. Such conditions must:
 - Require periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider; and
 - Continue over an extended period of time (including recurring episodes of a single underlying condition); and
 - May cause episodic rather than a continued period of incapacity (i.e. asthma, diabetes, epilepsy).
5. Permanent/Long-term Conditions Requiring Supervision. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be

² "Incapacity," for purposes of FLMA, is defined to mean inability to perform one or more of the functions of one's job, attend school, or perform other regular daily activities due to the serious health condition, treatment for that condition, or recovery from that condition.

³ A regimen of continuing treatment includes, for example, a source of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

6. Multiple Treatments (Non-Chronic Conditions). Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity if not treated, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).

4E. Use of Paid Leave

An employee may elect to use accrued vacation or sick leave concurrently with FMLA leave. The employee may also elect to use compensatory time or earned administrative leave (EAL) time while off work, but compensatory time taken and EAL time taken shall not be counted against the employee's 12 week FMLA entitlement.

However, there must be a bonifide illness in order to use sick leave concurrently with FMLA.

4F. Types of FMLA Leave

There are two types of FMLA leave: continuous and intermittent/reduced work schedule.

Continuous FMLA Leave. An employee who is off work entirely, for up to 12 weeks, for a single qualifying reason, is on continuous FMLA leave.

Intermittent FMLA Leave. Intermittent FMLA leave (or a reduced work schedule) is leave taken in separate blocks of time, interspersed with periods of work, due to a single qualifying (medical) reason. For example, an employee may request intermittent FMLA leave or a reduced work schedule for: transporting a family member to a medical care facility, for filling in for primary caregivers, for making arrangements for changes in care, for periodic medical treatments, or for episodic chronic illnesses/treatment (i.e.: chemotherapy treatment). Intermittent FLMA leave for medical reasons cannot exceed 480 hours in a rolling 12 month period.

Employees requesting intermittent leave or reduced work hours should schedule their leave so as to disrupt the agency's operations as little as possible. Employees should, when possible, submit a schedule disclosing their planned leave. (However, anticipated leave which was not actually taken may not be counted against the 12 weeks of FMLA eligibility.)

Employees on intermittent leave may be temporarily transferred to another similar position, if the transfer helps to accommodate the employee's intermittent leave, until the need for intermittent leave no longer exists.

Intermittent leave related to birth, adoption, or foster care is only available with employer (Appointing Authority) approval. In approving or denying the employee's request for intermittent FMLA, the Appointing Authority should consider the business needs of the Agency.⁴

In cases where intermittent or reduced work schedule FMLA is for birth, adoption, or foster care, use of intermittent FMLA leave cannot exceed a period of six (6) months regardless of the number of FMLA hours used.

4G. Calculating 12 Week (480 Hour) Eligibility

The State of Idaho uses a rolling 12 month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes FMLA leave, the amount of leave taken shall be computed and subtracted from the available 12 weeks of leave. The balance remaining is the amount the employee is entitled to take at that time.

4H. FMLA and Worker's Compensation

While an employee is on leave related to a workers' compensation injury (Ref. I-Time code "JAT"), the Agency may designate the employee's leave as FMLA leave. See SCO's timesheet codes for more coding options.

If an employee on worker's compensation leave is approved for modified or light duty work but remains qualified for FMLA leave, he or she may still choose not to work and to instead use FMLA leave. However, refusal of the modified or light duty work may lead to loss of worker's compensation benefits.

4I. FMLA Procedures

- 1. Notification and Request.** In some, but not all, instances, the need for FMLA leave is foreseeable.

Advance Notification Required. When the employee knows in advance of the need to take FMLA leave, the employee must give 30 days notice prior to taking such leave. Notice shall include the anticipated start date of the FMLA leave, and the expected duration of the leave. Employees are to use the "FMLA Leave Request" form for this purpose.

⁴ The Agency has the right to require the employee to temporarily transfer to another equivalent position while on intermittent leave to least disrupt business.

Impromptu Leave. In situations where advance notification is not possible, the employee shall notify the employer as soon as feasible. "As soon as feasible" would ordinarily mean the employee provides verbal notification to the employer within two days of the employee knowing of the need for FMLA leave.

If the employee is unable to complete the "FMLA Leave Request" form to request unforeseen FMLA leave, the supervisor shall complete the form on the employee's behalf.

If an employee is unable to provide notice, an employee's friend or family member, acting on the employee's behalf, may notify the employer of the employee's need to take FMLA leave. Such notice may be communicated via phone call, fax, mail, or E-mail. In such situations, the supervisor shall complete the "FMLA Leave Request" form on the employee's behalf.

2. **Medical Certification.** When an employee requests FMLA leave for their own medical condition or to care for family members, the employer may require the employee to furnish a doctor's statement certifying the medical information necessary to determine the employee's eligibility for FMLA leave at the time such leave is requested.

To expedite the processing of the leave request, employees are encouraged to furnish the physician's statement with their completed "FMLA Leave Request" form. Ultimately, the employee must return the completed medical documentation within 15 days from the date the leave request was made, unless a request for extension was received and approved. If an employee fails to provide medical documentation, FMLA leave may be denied.

In situations where FMLA leave was unforeseen, the employer shall request certification within 2 business days after the leave commences. The employee then must provide the medical certification within 15 days of receipt of the employer's request.

To determine the extent of an employee's serious health condition, if the first medical certification appears to lack validity, the employer may request a second opinion. If the second opinion is different than the first opinion, the employer may request a third medical opinion. That third opinion will be binding. If second and third opinions are requested by the employer, they will be paid for by the employer.

3. **Eligibility Determination and Response.** Upon receipt/completion of the "FMLA Leave Request" form, the employer shall:

- Confirm that the employee meets the eligibility requirements;
- Determine if the reason for leave qualifies for FMLA leave; and
- Calculate the hours of FMLA eligibility the employee has.

Upon confirming the eligibility (of the employee and the medical condition), the employer shall, within two business days, provide the employee a preliminary eligibility response. Within 15 days of receipt/completion of the “FMLA Leave Request” form, the employer shall provide written, official confirmation of the employee’s eligibility and the parameters of the FMLA leave, using the “Response to FMLA Request” memorandum.

4. **Procedures for Coding FMLA Leave.** Employees/supervisors should not code FMLA leave on timesheets until the employer has verified the employee’s eligibility for such leave. Such verification can be either orally or in writing. Available time codes include:

- FMS: Family Medical Leave—Sick. (This coding uses the employee’s accrued sick leave while on FMLA leave.)
- FMV: Family Medical Leave—Vacation. (This coding uses the employee’s accrued vacation leave while on FMLA leave.)
- FML: Family Medical Leave—Unpaid.

The decision to use accrued leave balances concurrently with FMLA is the employee’s; an employer may not require an employee utilize accrued sick or vacation balances while on approved FMLA leave.

Employees on FMLA leave who are concurrently using available sick or vacation time shall accrue sick and vacation hours at the same rate as if they were not on FMLA. However, employees utilizing unpaid FMLA (coded “FML” on timesheets) do not accrue leave credits.

Supervisors are responsible for ensuring accuracy of employee timesheets, including the use of FMLA leave codes.

5. **Completion of Leave.** An employee who is returning from FMLA leave may be required to provide a “Fitness for Duty” certification from their medical practitioner, if due to the nature of the health condition and the job:

- Light duty work or other accommodation is requested; or
- The agency, having a reasonable basis in fact to do so, requires assurance that returning to work would not create a significant risk of substantial harm to the employee or others.

Note that, if a “Fitness for Duty” certification will be required upon return to work, the employee must be notified of that requirement in advance writing, on the “Response to FMLA Request” memorandum.

4J. Benefits and Employee Rights

While on FMLA leave, the employee’s health and dental benefits will remain unchanged. Thus, the employee will still be responsible for their share of the monthly health and dental premiums. If the employee is using sick or vacation leave balances to receive a full paycheck while on FMLA leave, the employee’s portion of health and dental insurance premiums will be deducted from the paychecks as usual. However, if the employee is not receiving a sufficient paycheck, he or she must arrange to pay the employee’s portion of health and dental insurance premiums. If the employee does not return to work after FMLA leave for reasons beyond their medical condition, the employer can require the employee to reimburse the State’s share of the premiums paid during the employee’s FMLA absence.

An employee’s use of FMLA leave cannot result in the loss of any employment benefits that the employee earned or was entitled to **before** using FMLA leave.

Use of FMLA leave cannot be counted against the employee for any disciplinary action regarding attendance.

Upon return from FMLA leave, employees are entitled to be restored to the position they held prior to the FMLA leave, or to be restored in a substantially equivalent position with substantially equivalent benefits, pay, or other terms and conditions of employment.